

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

UNITED STATES OF AMERICA) CRIMINAL NO.:4:15-CR-00070-BHH-4
)
)
)
v.)
)
)
ROBERT EARL HEMINGWAY JR.)
a/k/a "Booda")
)

PRELIMINARY ORDER OF FORFEITURE AS TO
ROBERT EARL HEMINGWAY JR.

This matter is before the court on the motion of the United States for a Preliminary Order of Forfeiture as to Defendant Robert Earl Hemingway Jr. ("Hemingway", "Defendant"), based upon the following:

1. On April 14, 2015, a multi-count Superseding Indictment was filed charging Hemingway with conspiracy to commit drug trafficking, in violation of 21 U.S.C. §§ 846 and 841(a)(1).

2. Pursuant to Fed. R. Crim. P. 32.2(a), the Superseding Indictment contained a notice of forfeiture providing that upon Hemingway's conviction, certain properties enumerated therein, or equivalent substitute assets, would be subject to forfeiture to the United States. As specified therein, such assets include, but are not limited to the following:

(1) Proceeds/Money Judgment

A sum of money equal to all property the Defendants obtained, directly or indirectly from, or used to facilitate, the Title 21 offenses charged in the Indictment, that is, a minimum of approximately \$250,000 in the United

States currency and all interest and proceeds traceable thereto, in that such sum in the aggregate constitutes proceeds the Defendants obtained directly or indirectly as the result of such violations of Title 21, United States Code, or were used to facilitate such violations for which the Defendants are jointly and severely liable;

(2) Real Property:

- A. 1608 Dewitt Avenue
Conway, SC
Titled Owner: Sheila Hemingway

Real property with the address of 1608 Dewitt Avenue Conway, South Carolina, in the name of Sheila M. Hemingway formally described as follows:

ALL AND SINGULAR, that certain piece, parcel or lot land lying and Being in the Town of Conway Township, County and State aforesaid and being Lot B of the Brantley Subdivision, as shown on map by J.F. Thomas, R.L.S., dated April 3, 1961. The aforesaid map recorded in Plat Book 41, Page 6, Clerk Court's Office for Horry County, Bounded and described as Follows:

Beginning at the corner a common Lot A and Lot B located on the Northern margin of Dewitte Avenue and runs North 30 deg. 8 min. east With the line between Lot A and Lot B, 120 ft. to the corner common to Lot A and Lot B located on the line of Lot No. 6; thence south 59 deg. 45 min. East with the line of lot 6, 73 ft. to the corner common to Lot B and Lot C, Thence south 30 deg. 8 min. west with the line between Lot B and Lot C, 120 Ft. to the corner common to Lot B and Lot C located on the northern margin of Dewitte Avenue, thence north 59 deg. 45 min. west, with the aforesaid Avenue, 73 ft. to the point of beginning.

Bounded on the north by Lot No. 6, on the east by Lot C; on the South by Dewitte Avenue, and on the West by Lot A.

This being the same property conveyed to Franklin B. Hicks, Sr., by deed of Burroughs & Collins Company filed June 9, 1967, in Deed Book 367 at page 544, Probate File 99-ES-26-269.

TMS No.: 1370102010

- B. 1620 16th Avenue
Conway, SC
Titled Owner: Sheila Hemingway

ALL that certain piece, parcel, or lot of land lying and being in the City of Conway, Conway township, County and State aforesaid, and being Tax Map Number 137-01-02005, Lot No. 7 of Block B as show on a map by A.J. Baker, dated June 10, 1984 with note thereto by J.F. Thomas, R.L.S., dated August 15, 1953, and December 18, 1953, respectively. The aforesaid map recorded in Plat Book 14 Page 127, Clerk of Court's Office for Horry County, and bounded on said map as follows:

Bounded on the Northeast by Lot C on said map; on the Southeast by Brantley Street; on the Southeast by Lot No. 5 on said map, and on the Northwest by Lot No. 8 and portion of Lot No. 9.

This conveyance is made subject to any easements for road, drainage, transmission lines or like purposes upon or across same as well as those restrictions, limitations or covenants which are more fully described in the Deed of Title dated April 22, 1972 when the Burroughs & Collins Company conveyed this same property to the Grantor herein; said Deed title is recorded in Deed Book 1039 at Page 545.

Being the same property conveyed to the grantor and grantees by Deed of Distribution filed in the Office of the ROD for Horry County on January 2001, Deed Book 2331 at Page 0384.

Being the same property conveyed to the grantor and grantees by Deed of Title filed in the Office of the ROD for Horry County on August 17, 2007, Deed Book 3144 at Page 904.

TMS No.: 1370102005

C. 1707 Suggs St.
Conway, SC
Title Owner: Frank L. Ford

The property commonly known as 1707 Suggs Street, Conway, SC 29527. All and singular, that certain piece, parcel or lot of land situate, lying and being in the County of Horry and the state of South Carolina, and in Bucks Township, bounded and described as follows:

Commencing at a corner in edge of Suggs Street and running thence N29 52'E, a distance of ninety-three and five-tenths feet (93.5') to a pin corner; thence S59 45'E a distance of one hundred feet (100') to a corner, thence a southwesterly direction a distance of eighty-four feet (84') to a corner in edge of alley; thence a northwesterly direction along edge of alley a distance of one hundred feet (100') to the beginning corner.

Bounded on the northwest of Suggs Street; on the northeast by lands of Mammie Small; on the southeast by Lot No. 2 as shown on map made by AJ Baker, R.L.S., dated April 10, 1958; and on the southwest by alley.

This being the sale property conveyed to Annie B.A. Ford by deed of Frank Ford recorded October 18, 1972, in Deed Book 479 at Page 84 in the office of the Horry County Register of Mesne Conveyances, and the same property in which Frank Lawrence Ford conveyed his interest to Annie B. Ford by deed recorded March 27, 1992 in Deed Book 1536 at Page 681 in the office of Horry County Register of Mesne Conveyances, and the same property in which Thomas Latimer conveyed his interested to Dennis Latimer, Charles Dewitt and Frank Lawrence Ford recorded October 19, 2009 in Deed Book 3246 at Page 1356 in the office of Horry County Register of Mesne Conveyances and the same property in which Charles G. Dewitt and Dennis B. Latimer conveyed their interest to Frank L. Ford recorded on January 24, 2013 in Deed Book 3634 at Page 157 in the office of Horry County Register of Mesne Conveyances.

TMS No.: 1370103024

3. On May 6, 2015 a Second Bill of Particulars was filed with the court regarding property alleged in the Superseding Indictment filed April 14, 2015, as also being subject to forfeiture to the United States. Such property includes:

1. Real Property

(a) As proceeds (or, if not determined to be proceeds, then as substitute property):

Real property with the address of 1808 Ninth Avenue Conway, South Carolina, in the name of Bobby W. Hemingway, formally described as follows:

ALL AND SINGULAR, all that certain piece or tract of land, and being situated in the town of Conway, at the corner of Ninth Avenue and Gasoline Alley. The said lot is carved from Lot #2 on a map of three lots of Mrs. Cuba N. Rutledge by J.F. Thomas, dated August, 1955, revised January 1, 1956 and recorded in the Office of the Clerk of Court for Horry County in Plat Book 27 at Page 59. The lot hereby conveyed is more particular described as follows:

Beginning at the Northern corner of the intersection of Gasoline Alley and

Ninth Avenue, said corner being marked by an Iron N; thence North 45 degrees 33 minutes West along the Northeastern edge of Gasoline Alley 100 feet to a point; thence North 46 degrees 30 minutes East for a distance of 44.5 feet to a point; thence South 46 degrees 33 minutes East for a distance of 100 feet to a point on the Northwestern edge of Ninth Avenue for a distance of 44.5 feet to Iron N, the beginning point.

The said lot is bounded on the Northwest and Northeast by remaining portion of said Lot #2 as shown on the above-mentioned map, on the Southeast by Ninth Avenue and on the Southwest by Gasoline Alley.

TMS Number: 13-705-08-042

Asset ID: 15-DEA-611215

(b) As proceeds (or, if not determined to be proceeds, then as substitute property):

Real property with the address of Foster Avenue Conway, South Carolina, in the name of Bobby Hemingway and Nicholette Hemingway formally described as follows:

All and singular that certain piece, parcel or lot of land near the Town of Conway, Conway Township, County and State aforesaid and being Lot No. 9 of Block D of the Brantley Lands, as shown by map by S.D. Cox dated April 11, 1936, in the office of the RNC for Horry.

This being the same property heretofore conveyed to John Gore by deed in the office of the Register of Deeds for Horry County, SC, in Deed Book 2477 at page 0880.

TMS Number: 136-04-01-011

Asset ID: 15-DEA-611216

2. Vehicles/Motorcycles¹:

As proceeds (or, if not determined to be proceeds, then as substitute property):

- (a) 2003 BMW 745Li
VIN: WBAGN63433DR08275
South Carolina License Plate ARH-767

¹ All vehicles have been administratively forfeited except the 2012 Infiniti G37 which was returned to lien holder.

Seized on April 9, 2015 from Marco Delton Hemingway and Sheila Hemingway
Asset ID: 15-DEA-611706

- (b) 2008 Cadillac Escalade
VIN: 1GYEC63858R110657
South Carolina License Plate FER-262
Seized on April 9, 2015 from Robert Earl Hemingway
Asset ID: 15-DEA-611697
- (c) 2001 Lexus LS430
VIN: JTHBN30F010032706
South Carolina License Plate JGE-498
Seized on April 9, 2015 from Robert Earl Hemingway, Jr.
Asset ID: 15-DEA-611728
- (d) 2012 Infiniti G37
VIN: JN1CV6AR2CM971760
South Carolina License Plate KXV-374
Seized on April 9, 2015 from Marco Delton Hemingway
Asset ID: 15-DEA-611726
- (e) 2003 Ford F-150, Harley Davidson
VIN: 1FTRW07343KD43117
South Carolina License Plate 501-46C
Seized on April 9, 2015 from Marco Delton Hemingway and Sheila Hemingway
Asset ID: 15-DEA-611681
- (f) 2012 Can-Am Spyder, Motorcycle²
VIN: 2BXJALA10CV000446
South Carolina License Plate ZD64475
Seized on April 9, 2015 from Marco Delton Hemingway and Sheila Hemingway
Asset ID: 15-DEA-611674

3. Cash/US Currency

As proceeds (or, if not determined to be proceeds, then as substitute property):

- (a) \$3,228.00 US Currency seized on April 9, 2015 ³

² The Motorcycle has been administratively forfeited.
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Seized from Robert Earl Hemingway
Asset ID: 15-DEA-611654

- (b) \$106,830.00 US Currency seized on April 9, 2015
Seized from Bobby Wayne Hemingway and Nicholette Hemingway
Asset ID: 15-DEA-611658
- (c) \$56,384.00 US Currency seized on April 9, 2015
Seized from Robert Earl Hemingway, Jr.
Asset ID: 15-DEA-611661

3. On December 2, 2015, Hemingway signed a plea agreement agreeing to forfeiture and entered into a plea of guilty as to Count 1, of the Superseding Indictment, the conspiracy to commit drug trafficking offense on January 6, 2016.

4. Based upon Defendant's conviction and other matters of record, the court has determined that the property described above is subject to forfeiture, pursuant to 21 U.S.C. §§ 853, 881 and 28 U.S.C. § 2461(c).

5. The court has determined that the government has established the requisite nexus between the said property subject to forfeiture and the offense for which Hemingway has been convicted; therefore, the United States is entitled to a preliminary order of forfeiture, subject to the provisions of 21 U.S.C. § 853 governing third party rights.

Accordingly, it is hereby **ORDERED**,

1. FORFEITURE IS ORDERED against Marcus Dalton Hemingway and in favor of the United States in the amount of \$250,000 along with appropriate costs and interest thereon at the rate provided for in 28 U.S.C. § 1961. The United States may at any time move pursuant to Rule 32.2³

³ The \$3,228.00 in US currency was administratively forfeited.

- to amend this Order to substitute property to satisfy the money judgment.
2. The United States may sell or otherwise dispose of any substitute assets in accordance with law as required to satisfy the above imposed money judgment.
 3. The government is not required to publish notice regarding the personal money judgment against Defendant; however, the Order shall be recorded in the records of the County Clerk's Office in the County of the debtor's residence, place of business, and any and all other counties in which the debtor has either real or personal property, as a lien thereon.
 4. The following property is hereby forfeited to the United States of America, along with all right, title, and interest of the Defendant, Robert Earl Hemingway, in and to such property:

Cash/Currency:

\$56,384.00 US Currency seized on April 9, 2015
Seized from Robert Earl Hemingway, Jr.
Asset ID: 15-DEA-611661

Real Property:

- A. 1808 Ninth Avenue
Conway, South Carolina
Title Owner: Bobby W. Hemingway

Real property with the address of 1808 Ninth Avenue Conway, South Carolina, in the name of Bobby W. Hemingway, formally described as follows:

ALL AND SINGULAR, all that certain piece or tract of land, and being situated in the town of Conway, at the corner of Ninth Avenue and Gasoline Alley. The said lot is carved from Lot #2 on a map of three lots of Mrs. Cuba N. Rutledge by J.F. Thomas, dated August, 1955, revised January 1, 1956 and recorded in the Office of the Clerk of Court for Horry

County in Plat Book 27 at Page 59. The lot hereby conveyed is more particular described as follows:

Beginning at the Northern corner of the intersection of Gasoline Alley and Ninth Avenue, said corner being marked by an Iron N; thence North 45 degrees 33 minutes West along the Northeastern edge of Gasoline Alley 100 feet to a point; thence North 46 degrees 30 minutes East for a distance of 44.5 feet to a point; thence South 46 degrees 33 minutes East for a distance of 100 feet to a point on the Northwestern edge of Ninth Avenue for a distance of 44.5 feet to Iron N, the beginning point.

The said lot is bounded on the Northwest and Northeast by remaining portion of said Lot #2 as shown on the above-mentioned map, on the Southeast by Ninth Avenue and on the Southwest by Gasoline Alley.

TMS Number: 13-705-08-042

Asset ID: 15-DEA-611215

B. Foster Avenue

Conway, South Carolina

Title Owner: Bobby Hemingway and Nicholette Hemingway

All and singular that certain piece, parcel or lot of land near the Town of Conway, Conway Township, County and State aforesaid and being Lot No. 9 of Block D of the Brantley Lands, as shown by map by S.D. Cox dated April 11, 1936, in the office of the RNC for Horry.

This being the same property heretofore conveyed to John Gore by deed in the office of the Register of Deeds for Horry County, SC, in Deed Book 2477 at page 0880.

TMS Number: 136-04-01-011

Asset ID: 15-DEA-611216

5. Upon entry of the criminal judgment, this order becomes final as to Hemingway, and shall be made a part of his sentence and included in the criminal judgment.

6. The United States shall publish notice of this Order and its intent to dispose of the property in such manner as the Attorney General may direct. The United

States may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the said property.

7. Upon the entry of this Order, the United States Attorney is authorized to conduct proper discovery in identifying, locating, or disposing of the described property, or other substitute assets, in accordance with Fed. R. Crim. P. 32.2(b)(3); and to commence proceedings that comply with statutes governing third party rights, if applicable.

8. This Order shall serve as a Writ of Entry and Inspection, authorizing the Bureau of Alcohol Tobacco and Firearms and United States Marshall Service, and their authorized representatives to enter onto and into the premises of the above-described real property as necessary for purposes of conducting inspections, appraisals and videotaping the property, to record and document the condition, value and maintenance of the property until these proceedings are concluded. Any occupants shall be served with a copy of this order and provided notice of the forfeiture of the said property.

9. Any person, other than the named Defendant, asserting a legal interest in the subject property may, within thirty days of the final publication of notice or receipt of notice, whichever is earlier, petition the court for a hearing without a jury to adjudicate the validity of his alleged interest in the subject property and for an amendment of the order of forfeiture, pursuant to 21 U.S.C. § 853(n)(6) and Fed. R. Crim. P. 32.2(c).

10. Any petition filed by a third party asserting an interest in the above-described property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the subject

property, the time and circumstances of the petitioner's acquisition of the right, title or interest in such property, and additional facts supporting the petitioner's claim and the relief sought.

11. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Civil Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

12. The United States shall have clear title to the property following the court's determination of all third party interests, or, if no petitions are filed, following the expiration of the period provided in 21 U.S.C. § 853(n)(2) for the filing of third party petitions.

13. The court shall retain jurisdiction to resolve disputes which may arise and to enforce and amend this Order as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

14. The Clerk, U.S. District Court, shall provide one (1) certified copy of this Order to the United States Attorney's Office.

AND IT IS SO ORDERED.

s/ Bruce Howe Hendricks
BRUCE HOWE HENDRICKS
UNITED STATES DISTRICT JUDGE

February 18, 2016
Florence, South Carolina